

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHRISTOPHER BENJAMIN, #1372371 §

VS. § CIVIL ACTION NO. 6:12cv10

LT HARDIN, ET AL. §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love. The Report and Recommendation (“R&R”) of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, concludes that this civil rights action should be dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994) and *Edwards v. Balisok*, 520 U.S. 641, 648, 117 S. Ct. 1584, 137 L. Ed. 2d 906 (1997) because the prison disciplinary case of which he improperly complains in this 42 U.S.C. § 1983 case has not been overturned. Therefore, Plaintiff fails to state a claim upon which relief may be granted under 28 U.S.C. § 1915A(b)(1); however, dismissal should be without prejudice to Plaintiff refiling his claim at such time as he can demonstrate that he has been able to have the pertinent prison disciplinary case reversed, expunged or otherwise declared invalid.

The Plaintiff has filed written objections (docket entry #11). In his objections, Plaintiff again claims that the disciplinary case written against him and under which certain punishments were imposed on him, was conducted out of retaliation for his threatening to bring a grievance against

Defendant Hardin, Objections at 4-6, and that there was no evidence to support the finding of his guilt, *id.* at 7-9. However, he does not show that the prison disciplinary case, which is the basis of his § 1983 suit, has been overturned. In fact, it is clear that it has not been. Regardless of Plaintiff's argument, however, the Supreme Court precedent of *Heck* and *Balisok* do require just such a circumstance before his civil rights claims can proceed.

The Court has conducted a careful *de novo* review of the pleadings in this case, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that Plaintiff's objections are **OVERRULED** and the Report of the Magistrate Judge is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil case be and hereby is **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1).

It is further

ORDERED that any and all other motions that may be pending in this civil action are hereby **DENIED**. Finally, it is

ORDERED that the Clerk shall provide a copy of this opinion to the Administrator of the Three-Strikes List for the Eastern District of Texas.

SIGNED this 10th day of May, 2012.